IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4171 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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MAHEBUBBEG ALIAS MAHEBUB SINOR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR DN PATEL, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The detenu, who was detained by order dated 1.6.1999, vide Annexure 'A' to the petition, passed by the Respondent No.1 under the provisions contained in section 3 of the Gujarat Prevention of Anti-Social Activities, Act 1985 (hereinafter referred to as the Act), has preferred this petition.

2. The detenu was served with the grounds of detention dated 1.6.1999, vide Annexure 'C' to the petition, wherein it has been pointed out that the detenu is a dangerous person. From the grounds it appears that three offences were registered, which are punishable under the Penal Code and the Bombay Police Act. From the grounds it appears that the detenu is in the habit of robbing innocent people with the assistance of others, and by use of dangerous weapons. On account of the activities of the detenu, it is difficult for the citizens in the locality to live peacefully. Grounds of

detention also discloses that the detenu is a dangerous person. Suffice it to say that in the instant case, the detaining authority has filed an affidavit pointing out that the detention order is just and proper.

3. In the present petition, this Court would not like to go into the legality of the order of detention passed by the respondent No.1. What is required to be decided in the present petition is whether the continued detention is bad, illegal or in accordance with law. It is contended specifically by the detenu in the amended ground 20(A) as under :-

> "The petitioner states and submits that the advocate of the petitioner detenu had addressed a letter dated 15th June 1999 to the Jail Superintendent Jamnagar at Jamnagar along with the representation for obtaining the signature of the petitioner detenu in the said representation and then requested to forward the said representation to the Hon'ble State Home Minister, Government of Gujarat, Sachivalaya, Gandhinagar, and also requested in the said letter to send the copy of the said representation to the Chairman, Advisory Board. The petitioner states and submits that the petitioner has not received any communication either from the respondent No.1 or respondent no.2 with regard to the consideration on the said representation, and, therefore, there is unexplained delay in considering the said representation either by the respondent no.1 or respondent no.2 which is violative of Art. 22(5) of the Constitution of India, and therefore, continued detention of the detenu is bad in law and illegal which required to be quashed and set aside."

4. On behalf of the State, no affidavit is filed interalia to point out whether the representation received from the detenu has been disposed of in accordance with law. It is the duty of the State to decide the representation of the detenu in accordance with law and as per principles laid down in various decisions of the Apex Court.

5. In the absence of affidavit on behalf of the State, the grounds raised in the petition in paragraph No. 20.A is required to be accepted. Despite opportunities given to the State, no affidavit has been filed controverting the contentions made in the petition.

The petition, is therefore, required to be allowed. The continued detention of the detenu is held as bad and illegal for the reasons aforesaid. The detenu is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

csm./ ----------